IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

JULIE CHRISTOFFERSON TITCHBOURNE,)
)
Plaintiff,)
)
vs.) No. A7704-05184
)
CHURCH OF SCIENTOLOGY, MISSION)
OF DAVIS, a non-profit California)
corporation, doing business in)
Oregon; CHURCH OF SCIENTOLOGY)
OF CALIFORNIA, a California)
corporation, doing business in)
Oregon; and L. RON HUBBARD,)
)
Defendants.)

EXCERPT OF PROCEEDINGS

Volume VII
Pages ~~4059 to 4163~~
Testimony of Gerald D. Armstrong

April 4, 1985

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Court Reporters
1001 S.W. Fifth Ave.
Portland, Oregon

(Court reconvened on Thursday, April 4, 1985, beginning at the hour of 9:40 a.m. Following proceedings held out of the presence of the jury.)

THE COURT: Ready to go?

MR. WADE: Your Honor, we have brought copies of the time track of Mr. Armstrong and his B1 file. The first thing we would be discussing this morning is the B1 file materials.

THE COURT: Mr. Armstrong was going to testify about those specific items missing from his B1 file.

(Mr. Armstrong resumed the witness stand.)

THE COURT: You are still under oath.

MR. WADE: Your Honor, we have marked -- had marked as Court Exhibit 253, the time track and also an additional typewritten listing Mr. Armstrong prepared, showing other documents which are missing besides those circled in the time track. We would offer that as Court Exhibit 253 at this time.

THE COURT: Just one second. Somebody gave me a copy of a transcript of the deposition of Mr. Armstrong -- I think you did, Mr. Runstein.

Number 253, is a Court Exhibit received for that purpose. Okay.

(Court Exhibit No. 253 received.)

VOIR DIRE EXAMINATION

BY MR. WADE:

Q. Mr. Armstrong, I'm going to hand you what has been produced as your Bl file. Before we go into the additional items which are on the first page of Court Exhibit 253, would you please go to your time track and tell the Judge what you have done to show which documents are missing from the time track from the Bl file and then explain how you know those documents are missing.

A. What I did, Your Honor, was circle on the left-hand side, all of the items which are missing. These items were used in the preparation of this time track and they should form part of this Bl file. All these things should have been filed in here, the various FCOs, Conditions Order, and the various reports, some of which are quoted from, but the report which has been quoted from is not in the file. Everything that I have circled here should be here and is missing from the file. This is several pages.

THE COURT: There is a great deal of material, if I'm looking at this correctly, that we are talking about.

THE WITNESS: That's correct, Your Honor.

MR. MANION: Your Honor, I have an

explanation for it.

THE COURT: Okay.

MR. MANION: Last night I spoke with our client and they told us about how B1 file was compiled. Again, they gave us their absolute assurance that the entirety of Mr. Armstrong's file was produced.

A time track is compiled from a variety of sources and documents. They talk to people, they review Ethics files, they review Flag Orders, they review hundreds and hundreds of documents. Somebody sits down and makes a chronological summary of Mr. Armstrong's activities while a member of the Church of Scientology. Those documents never become part of the B1 file. Flag Orders, Ethics Orders, Knowledge Reports, internal communications, they never find their way into the file, Your Honor.

The B1 file is just what we have produced. Those documents that we turned over to Mr. Wade. Now, for Mr. Armstrong, who has been out of the Church since 1982 and whose involvement with the Guardian's Office and B1 is at best tangential and remote, to say that as a matter of practice, custom and business the B1 files contain such documents is incompetent and unsubstantiated.

Under the order that this Court issued, Your Honor, Mr. Armstrong said as a part of his claim the Bl file was missing documents, that documents even up to today were not included in it. Your order, Your Honor, only required the production of documents through April 11, 1983. Our clients assure us, and I believe it's the requirement and the obligation of a party responding to a request to produce, that everything contained in Mr. Armstrong's Bl file was produced to him. That the documents and the categories of documents found in Mr. Armstrong's Bl files are the kind of documents that you would find in anyone's Bl file. For Mr. Armstrong to say because sources, Ethics Orders, Flag Condition Orders, bulletins, all kinds of documents were referred to or utilized in the preparation of a time track, doesn't automatically put those documents in the Bl file. They may have been consulted, they might have been utilized. There is documents all over a world-wide organization. But they were never in the Bl file.

We give you our representation of counsel that the question was asked specifically to the client. The client was instructed as to the Court's order. I went over in detail the Court's order, what it encompassed with the client, and I assure the Court that every document contained in the B1 file was produced to Mr. Armstrong.

Now, if Your Honor wants me to go through the eight item that Mr. Armstrong has identified on page one of Exhibit 253, and say were these reports ever contained in the B1 file? Did you have any knowledge they were pulled out of the B1 file? I would be happy to do that. But I'm telling you, Your Honor, these are the B1 files, notwithstanding this witness' assertion that other things should have been in it.

THE COURT: Let me understand this. This addendum, additional documents, of eight items, is that in addition to the circled numbers that are contained --

MR. WADE: Yes, Your Honor. We would request that we be provided the name with the person Mr. Manion spoke to who gave him that information.

MR. MANION: I have no problem with that. It was Mr. Gutfeld. And he's here.

MR. WADE: I would like to ask Mr. Armstrong some more questions, if Mr. Manion is finished.

MR. MANION: Sure.

THE COURT: I'm in a difficult position

because I am in a position of not knowing what goes in a Bl file.

MR. MANION: Your Honor, their request to produce, we understand our obligation to press on the client and explain to him, in very understandable language, what they are required to produce, and we did that. They have said this is what is the Bl file. We are in the same position you are, other than we give you our assurance that we as counsel have discharged our obligation and are satisfied with it.

BY MR. WADE: (Continuing)

Q. Mr. Armstrong, with respect to the listing from the time track, how did you become familiar with the kinds of documents that are in the Bl files?

A. Well, I have seen other Bl files in the organization. I saw a Bl file which was Nibs Hubbard's Bl file. It was over a whole file cabinet in size. And for every entry on the time track, there was a document in the file.

Q. With respect to the listing and -- which is the first page of Exhibit 253, would you explain to the Court what items are missing and what leads you to believe that such items would have been in the Bl file.

A. We are talking about the cover note on the front?

Q. Yes.

A. First of all, there is a note here saying: "No. 4. I note the organization has B1 one files for this" -- should be "the rest of my family members." That's not really an item which is omitted from my file. However, the rest of them, there are various references in here from which I can determine that these reports were consulted or that they should have been there. The first one is a major event. I was locked up in B1 by the Deputy Guardian for Intelligence, in June of 1976, in the Fiefield Manor. And there would be a mass of reports from that period, all of which would have gone into my B1 file. It's ludicrous to say they were when it was such a major event for B1 itself.

There's a document in here called the Jerry Armstrong Project, which involves a number of targets to be done regarding me. There should have been all the reports which arose from that. All the, actions which were taken by B1, because it was a B1 operation. There are a number of references in the B1 time track of material which was taken from my PC files. All of the cullings which were done of my PC files should have been in there.

There's a document which begins, number three, that -- this is number five on my list here, "Data on how" -- it continues on for half a page, at least page one of that document is missing.

There is a page of Intelligence Report regarding the

Curacao Consulate, United States Consulate in Curacao in the Netherlands Antilles. There are no other Intelligence Reports for operations I was involved in in the Guardian's Office, on the ship or later.

There's a document there having to do with a dead agenting of Jerry Armstrong's, dated September 30, 1982. It references a number of things about me, known out securities, some phone calls I allegedly made, a mission which I was supposed to have done to Charleston, communications to and from George Kelly. It references a Madrid incident, an incident when I was detained at the Madrid airport for a number of hours. This also -- this is in itself, the DA of Jerry Armstrong, is a Black Propaganda Campaign orchestrated by the organization and there should be a mass of documents to do with that.

There's a reference regarding an order from the Special Unit, PAC, Pacific area, stating I was not to be harassed. This is referenced, but it is not in the file.

Those are what I was able to, at a glance, see last night.

Q. So what you find are actually parts of documents or incomplete documents, and in addition to that, you find documents which reference other documents which are not in the file?

A. That's correct. Every time my name would be mentioned, that document would go into my file. There is massive cross filing within the Guardian's Office in B1.

Q. Mr. Armstrong, are there any other documents which are not contained in your B1 file besides those you have already mentioned?

A. If we are only taking a cutoff date of April 1983, then all the documents concerning the month and a half of harassment by private investigators hired by the organization should all be in there.

Q. Would there be anything else in there?

A. I don't know. Thereafter, there's a mass of documentation which ought to be there.

Q. What would that mass of documentation concern?

A. It would concern all operations by the organization against me, operations in which people from the organization were sent out to contact me for various things, Terri Gamboa, Mark Rathbun. There was an operation in which I was harassed in London, England; that also would be in the B1 file or be in the Intelligence files in the organization, whatever those Intelligence files currently are. They renamed the Intelligence -- the Guardian's Office, the Office of Special Affairs at some point.

There would be information regarding photographs that were taken of me by the organization in November 1984. There would be references to and hopefully all the documents which were stolen from the trunk of my car, in November 1984.

There's a mass of documentation which the organization has assembled on me which they have in their possession, and they may have renamed the files from Bl to some other name, but they've got this information.

Q. Are you then aware of operations against you in the last year or two?

A. Yes.

MR. WADE: Your Honor, I think it's clear from Mr. Armstrong's testimony, if the Court would like to review, we've brought this Bl file. I think of particular interest is the fact that certain of these documents mention other documents of the same sort, yet those documents are not in the file.

The Bl file of Nibs Hubbard, which Mr. Armstrong has testified about, was produced for us. I can provide to the Court the copies we have from that file which show that when these excerpts are taken, the other documents are contained in the same -- it was then the Bl file. The difference may be that in Nib's file, it was things that -- the documents which they produced were unfavorable to L. Ron Hubbard, Jr., whereas in this case, the documents not being produced would be favorable to Mr. Armstrong.

We request that there be sanctions against the defendants if they do not forthwith produce the entire Bl file of Mr. Armstrong, and those documents which would be contained in that file. What has happened is, they have produced documents which are incomplete in many instances, documents which have been removed in many instances, and the entire file should be produced.

MR. MANION: Your Honor, Mr. Armstrong has no familiarity with what his file contained before he left the organization, so he can't tell us what has been taken out of the file. He says a lot should have been, should have been, ought have been. He's been out of the organization since December of '81.

THE COURT: Mr. Manion, where are all these documents?

MR. MANION: All the documents referenced in the time track? They are collected throughout the organization in Ethics files, in Knowledge Reports, in Flag Orders. The man was in the organization, according to his own testimony, for eleven years. Hundreds and hundreds of documents and other sources, talking to people, were used to compile the time track. For him to say that L. Ron Hubbard's son's time track is different to him --

THE COURT: I don't care about that. I want to know where these documents are in the organization.

MR. MANION: They are in the organization.

THE COURT: Let's have them.

MR. MANION: All right. We'll get on it.

THE COURT: In view of what we decided last night of what cross-examination is going to consist of, I want all documents with reference to Mr. Armstrong, everything listed here, everything circled, everything on this addendum list, produced.

MR. WADE: Your Honor, we would request documents to date since the allegations concern things which would have taken place after May of 1983.

THE COURT: I was expecting that question. Are we going to get into an area after the date he left?

MR. COOLEY: Yes, sir.

THE COURT: Then we need those documents as well.

MR. COOLEY: All right, Your Honor.

MR. WADE: Thank you, Your Honor.

THE COURT: Now the question is, when?

MR. COOLEY: We will put our people to work on it as soon as business concludes today.

THE COURT: Mr. Gutfeld is sitting there.

MR. COOLEY: May I consult with him, Your Honor?

THE COURT: Sure.

(Mr. Cooley and Mr. Manion consulted off the record with Mr. Gutfeld.)

MR. COOLEY: We believe we can do it by Monday, Your Honor.

THE COURT: That will work; in view of what our timetable is, I think that will work.

MR. COOLEY: I think it will, too, Your Honor.

THE COURT: All right, that satisfies that requirement, Mr. Wade.

MR. WADE: Thank you, Your Honor.

THE COURT: We have this document; I'll hold on to it and let's work again.

Bring the jury back.

(Following proceedings held in the presence of the jury.)

THE COURT: Good morning.

Mr. Cooley.

MR. COOLEY: Thank you, Your Honor.

CONTINUED CROSS-EXAMINATION

BY MR. COOLEY:

Q. On or about November 7, 1984, did you meet in Griffith Park in Los Angeles with a person known to you by the name of Joey?

A. I can't tell you the date, but I have met someone known to me as Joey.

Q. And did you meet him in Griffith Park in November?

A. It's very likely. Again, I met him a number of times, and November comes to mind.

Q. And did you understand at that time that Joey was a representative of a group within Scientology known as the Loyalists?

A. That's basically how he called himself.

Q. And did you understand at that time or believe at that time that Joey was a staff Scientologist?

A. I asked Joey at the outset whether or not he was working for Scientology, and he said he was not. I never determined what post he was on or where or what organization he was in, if he was. In fact, I attempted to find out exactly where he and where the others in the organization, that he said he was a part of, where they were, who they were, and I could not and did not. But he assured me that he was not working for the organization; that is, he was not working for RTC ASI Scientology, whatever that corporate thing is.

Q. On the occasion that I refer to, did Joey furnish you with some internal documents?

A. The one time -- I believe there was one time Joey furnished me with some documents, they were public documents -- that is, they were published by the organization -- and I took them and gave them to the Criminal Investigation Division of the IRS.

Q. On the occasion of your meeting with Joey, to which I have been referring, did you review the documents, saying that you would study them later and that you and Mike would have a lot of questions based on the documents?

A. Boy, I may have said something like that, but it really doesn't come to mind. What I did was provide the documents to the IRS. The documents all concerned some organization called, my recollection is, the International Hubbard Ecclesiastical League of Pastors. And Joey had described this organization to me as something that the organization -- that is, Scientology or whoever -- corporately had set up in order to cover up the decimation of what was called the Mission Network. And I didn't know, prior to Joey's telling me, of the existence of this group. But he said that that was the key to unraveling the corporate octopus, and I provided them to the IRS.

Q. Did you inform Joey, as you reviewed the documents, that you felt like a kid in a candy store and asked him whether the written issues that passed through the organization were run off in the Church and whether the type face used on those issues was similar to the type face that appeared on the documents that he showed to you?

A. Run that by me again.

Q. Did you say to Joey in substance, when he handed you these documents and as you reviewed them, that you felt like a kid in a candy store and then asked him whether the type face on issues that went through the Church was the same as the type face that appeared on the documents that he was giving to you?

A. First of all, the kid in the candy store would not be my phrase at all. I don't believe I have ever said that. He may have said it. But I would not have been concerned about the type face of these documents; it wouldn't have concerned me at all. These documents were, I recall, mimeographed issues and were regular standard mimeo issues. We may have talked about type faces at some other time, but I don't recall at that time. Perhaps Joey could correct me, but it doesn't make any sense that I would have brought up type faces in regards to organization documents which I was getting.

Q. Did you on that occasion tell Joey that you could create documents with relative ease because you had done it for a living?

A. Not -- Mr. Cooley, that's -- No.

Q. Did you on that occasion tell Joey that it was necessary for you to talk about the kind of documents that should be created and who was going to get them?

A. I don't quite understand your question. That I should talk -- Run that by me.

Q. Did you tell Joey that it was necessary for the two of you to discuss the kinds of documents that should be created and placed in the files of Scientology and to whom they would be disseminated?

A. Joey had, perhaps on this occasion, and definitely on earlier occasion, brought up to me the possibility of placing documents in the organization. It was one of the plans of the groupe belonged to. Obviously, it was an operation from the outset, but what he told me was, one of their plans was, in order to get rid of the little clique at the top of the organization, they wanted to plant -- create documents and plant it -- plant them in the organization. He brought this up on at least a couple of occasions. I said, "It makes no sense." I said, "That will ultimately only get you more trouble and it really isn't needed." And I never agreed to such a thing, and I never suggested it.

Q. Had you, prior to the meeting to which I refer, furnished Joey or any other alleged Loyalist, with a copy of a complaint to be filed against the Church and individuals in the Church, including L. Ron Hubbard?

A. What happened was -- I'll give you that, because we are talking about two documents here. So I will go back, now that the whole situation is out, and again, it's obvious that this is an operation, was from the start, and that I was sucked in by this organization one more time.

I was called just after the Armstrong trial, which ended in early June, 1984. I was called by someone, and this person said, did I want my PC files. I had wanted my PC files for a long time, and it was obvious that, sure, I wanted my PC files, I didn't want the organization to have them, and I wanted them for my own peace of mind and any number of reasons.

The person -- it was a male voice -- said that they were being transferred that night. And later I got that they were being transferred from ASI. They were being transferred that night, and did I want them. I said, "Are you going to deliver them to me?" I still don't know who made the call, but I thought at the time it might be Mark Rathbun, who I saw in the court this morning, but it probably wasn't, it was probably someone else working for the organization.

So I then asked -- or it came out that I would have to go somewhere and pick them up, and I said you, "Could that be construed as accepting stolen property?"

And the person said, "I don't know what the legal definition of it would be."

So I said, "Well, in that case, as much as I want them, I'll pass." That was my first direct contact, and here it was just a voice on the end of the phone.

Within a day or two -- I was at that time -- The trial had just completed, my trial, and I had already made arrangements prior to the trial to testify in a case in London, England, a custody case. And I was called again and -- same voice -- and I was told that "While you are in England, you are going to be served with a lawsuit by the organization. And the reason this is to take place in England is because over there, you are going to have to get an attorney and you are going to have to come back here, and you are going to have to go back there, and they are going to break you financially by your having to defend yourself."

So in any case, I still decided to go to England. While in England -- I arrived on a Friday in England, and by Tuesday, I had picked up surveillance.

I was with my wife over there, and we were staying in a little hotel, and we knew we were being surveilled on Tuesday. I had testified on a Monday and we left on a Friday, and we picked up surveillance in London on a Tuesday, Wednesday, Thursday and Friday. And it made it an extremely unpleasant stay in London when it could have been something half decent.

On the way, flying out of Heathrow Airport in London, three people who identified themselves as private investigators -- we only had about -- The plane was boarding when this thing happened and we were in a panic to get through lines and to get there, and we were followed from the hotel out to the airport. And then two more PI's picked us up in the airport, and I was indeed served with a paper.

The paper was not a lawsuit. It had -- It was an emergency stay in my case from the Appellate Court, sealing the documents which had been admitted into evidence. This was served on me; it made no sense whatsoever, because what had been custom up to that point, simply to give my attorney a copy of whatever paper I was being noticed with.

During this period, which lasted about ten minutes with the private investigators, this guy kept repeating that -- first of all, he said, "What were you doing in the Old Cock Tavern on Tuesday night?" And I said, "You are nuts." The Old Cock Tavern happens to be on Fleet Street right -- a little down the road from the Court, High Court in which I was testifying in the custody case. And I -- in fact, my wife and I had had lunch at the Old Cock Tavern on the Monday preceding this alleged incident on the Tuesday. I said, "You are nuts." He said, "You were observed by two private investigators in the Old Cock Tavern on Tuesday." I said, "You are nuts. I was in the Old Cock Tavern on Monday." He said, "Who was the Arab you were talking to in the Old Cock Tavern?" Again I said, "You are nuts. I never talked to an Arab."

And he kept pushing this and finally he ended up saying, "You were observed by two private investigators passing sealed documents to a bearded Arab in the Old Cock Tavern on Tuesday evening" -- an incident which never took place. My wife and I had, in fact, gone to the Old Cock Tavern on Tuesday because the luncheon Monday had been okay, and the place was sealed off. That is, the dining room part was sealed off. So after the Monday, I was never in the Old Cock Tavern; I never spoke to any Arabs there. The only person I did speak to there was the waitress and my wife.

In any case, I knew at this point there was some operation going down regarding me, and I was extremely freaked out and upset. Then I got back to the U.S. And the day after my arrival I prepared an affidavit, which was filed in my case, laying out all of these -- the incidents from London.

Then there was another series of events which happened. I was in court in my own case -- there was a hearing -- and I had won my case and there was a decision which had come from the judge; it was a very strong decision, it was completely in my favor. And the attorney for the organization, a guy by the name of John Peterson, went into an absolute tirade in the court, again going through the same party line of the organization: that I was a thief, that I had stolen these documents, and I was guilty -- when those private investigators who harassed me and my wife for a month and a half, I was guilty because I had taken their photographs.

And I knew then that there simply is no way that courts can restrain these people; that it is a terrorist organization. I had beat them in court and yet it was meaningless. And I knew this whole thing came from Hubbard. And I knew that I had no future whatsoever, and the only thing to do was to confront what was this thing which was masquerading as a religion and was, in fact, a terrorist organization.

So during that period of time, I was again contacted by -- by whoever. It probably ended up being this person Joey; I never got his real name; I don't know it to date. There was a meeting that took place. And I don't recall if -- during the meeting or before, but any case, at one of these events, and they took place over at least a couple of months and possibly several months. I had a complaint which had been prepared a couple of years before by my then attorney Michael Flynn, and the complaint was essentially to have a receiver -- I don't know the legalese on this, but to have a receiver appointed, to put the organization in the hands of a receiver so that the money which was being paid to private investigators to attack people like myself, that that sort of activity could be curtailed.

Around the same time, I learned of -- in the press, the organization made an accusation against my attorney, Michael Flynn, for -- the claim was that he had attempted to cash a forged check of $2 million on LRH's account. I know Michael Flynn, and Michael Flynn has saved my life in this whole thing. And I knew that that was again nothing more than an organization operation.

I knew that they were trying to tie me in, because the person that they -- that the organization claimed linked Michael Flynn in was an Arab by the name of Tamimi. And the organization came with this idea, or they claimed that they had obtained the proof of Michael Flynn's forging the check, by -- from a private investigator by the name of Eugene M. Ingram. I had known that Ingram was working for the organization sometime prior to that. I had been shown press on Eugene M. Ingram during the Armstrong trial. I knew this was a guy who had been dismissed from the Los Angeles Police Department, that he had been indicted on charges of pimping, pandering, involvement in drugs, and that this was the guy that the organization was using to set up Michael Flynn. And this was the guy that Hubbard, ASI, that group within the organization was paying him and his ilk to destroy me. And I knew that I'll do whatever I can. I never did anything illegal, in any case.

I knew then that they had this alleged incident with me passing alleged documents to this bearded Arab -- Tamimi's an Arab. Somehow they are trying to hook me into it. I went to the FBI, and I continued to provide whatever information I could to the FBI as this whole thing developed. I think it's very serious. And they are talking about the absolute destruction of a decent man's reputation, and they bought the testimony of Tamimi, a known perjurer who was then, awaiting extradition to the United States, in an Italian jail. And they used this as the facts on which to smear Michael Flynn's name. I was obviously involved because of the Arab connection. I didn't know how, but I knew it was an operation.

In any case, sometime along, I was recontacted by Joey. And the main thrust of the communications from Joey was that this group -- he never identified them -- they were apparently within and without the organization. I don't know who they are. He said that they want to reform the organization. He said that they believed that the smear of Michael Flynn was a setup by the organization. They said that they had more information regarding this.

And at some point, either prior to or right following the first incident, they gave me a document -- you know, who they are, I don't know -- it was the second page of what in Scientology is called a Cramming Order. Someone -- and she was identified as Ann Rackerman or Rackeman, was crammed within the organization -- crammed means that you are sent to be straightened out, to be corrected, because you erred in something. She was somehow involved in the Tamimi-Ingram setup: Michael Flynn. Within that document was a name "Rezervitz"; it was partially blacked out, but I was able to make that out of it.

I knew, via Michael Flynn, the name of the Assistant U.S. Attorney in Boston who was involved in the investigation of this matter. And I called him up and I read to him what this thing which had been provided to me said, and he said send it to him. All I had was a handwritten -- it was handwritten off the document, off the second page. I had handwritten it. And I did call up Brackett Deniston, gave him the information and sent him that document.

Subsequently as the -- this mythical group, whoever they were in the organization, provided me more information. I don't know -- again, it is probably an operation by Hubbard-Ingram, right from the start; it probably was, and probably I was duped.

In any case, I trusted these people, and they provided me more information. It was information which linked in a company by the name of Intercap in Arizona, and Intercap led to a company called Intertel -- Intertel is an international intelligence -- private intelligence organization. And the organization had given money to Intercap and Intertel. The information however, which she said should have been in the files, had been removed from the files in an attempt to cover up the Ingram-Intercap-Intertel connection. That's all I know of that, but I provided that information again to the Assistant U.S. Attorney in Boston.

I met with Joey -- the first time I met him was -- and each time I met him -- it was on his instructions on where to go, and I followed whatever security precautions he deemed were advisable to take. I was fairly high profile by choice. That's the way I felt that it was my best protection in this whole thing. He chose a different route. And when I met with him, I accepted whatever directions he gave. I always asked him if he was taping the conversation, he said no. I asked him if he was working for the organization, he said no.

In all conversations, I stressed that I have no interest in Scientology. To me, it is a perfidious organization. It doesn't mean anything to me. I don't care if other people continue to be Scientologistists, that's up to them. But the reign of terror of the organization, I considered, had to stop. And I was out there. How it happened to -- you know, how I got put in the position, I will never know. By misfortune, probably.

Joey's and this group's, so he said, their main interest was in proving that the Tamimi-Ingram story was false. I think that current events, as have been up folding, have been showing that to be true. I was recently sent a copy of a post card which had been received in the U.S., from Tamimi, in which he stated that he now knew what Ingram was up to and that people were being hurt, and that he wanted to talk to somebody. He said he had sent the same thing to the press and that he had sent it to the U.S. Consulate. I think he said the consulate or embassy. I have a copy of that post card. And that was within the last month.

So I said to Joey, and I said it on the first occasion, and I said it a number of occasions, that "If they want to take over this organization, fine with me. If they say they want to end the reign of terror, fine with me. If they want to reform the organization, fine with me."

They said that they contacted me because I had a track record. They said that I had the only -- I was the only one with known statistics, that I had taken on the organization and beat them; that is, in my own case. And that I had been the only one to do that and that's why they were contacting me. I don't know. You know, they know my buttons, and they know on what subjects I'm sensitive and they probably played them to the hilt. They know how chose I was to Mike Flynn. They knew I wanted to protect Mike Flynn.

Anyway, I met with him a number of times. There was probably two main meetings. Throughout this, as well, I was writing a book, which I continue to writeworking title of that book was, from the outset, On The Trail of Eugene M. Ingram.

It probably is on the trail of L. Ron Hubbard, ultimately, but it's a book and it involves this massive intelligence operation by the organization. And it involves my own part in it. It involves communications which I gave to these people, different kinds. Some were quips, because underneath this all, I do have a sense of humor. Some were -- you know, statements which they requested. Various, various things. I don't even recall what they all are right now.

I'm sure Mr. Cooley is going to bring them all out here and parade them in front of everyone.

I was asked about various possibilities. They said that they had a concern and I had a concern, that what happened, when this thing finally resolves, is not a Jonestown. And the various things which I suggested and which Joey suggested, I thought were in alignment with that need to make -- they wanted a transition of power within the organization. They wanted to get rid of the clique at the top. They were very concerned about Ingram. They were very concerned -- they laid out to me how -- when I say "they", I spoke to two people. Joey was, I suppose, a messenger for the organization. So often I say "they", because he spoke as if he were speaking for this group.

They wanted to get rid of the private investigators. They were very afraid of the private investigators. They were afraid for their lives. So they said.

I told them that they should know from the outset that the organization knows who I am, they know where I live, they have taken my deposition many days so far, they are going to take it again. I'm going to be asked questions. I said that I would try to protect identities. And I still would do that today if the Judge ordered me to name names, I would have to give it a lot of thought. I suppose it's moot at this point, because it was an organization operation from the start. But I told them that.

We discussed a number of things. Some of the things were light. Some of the things were heavy. I can't recall everything that we did discuss. There was a very intense time. I met him -- I only recall two locations. One was in the cemetery and one was in Griffith Park. And it may be as Mr. Cooley, says November 7.

On November 8, I was photographed by people from the organization about two miles away from the organization, from the Cedars Complex in Los Angeles. And at that time, I was going to the IRS and I parked in an underground parking. And I was up talking to the IRS for approximately 45 minutes, during which time a briefcase containing a manuscript, the original handwritten pages of a manuscript, and about 50 pages of artwork, so there was about 350 pages in all, was stolen from my trunk. It was locked. They went through with a little tool.

In my opinion, although the evidence is only circumstantial, the organization got that manuscript and the various documents which went along with it.

I had my attorney at the time, Julia Dragojevic, write a letter demanding the photographs that were taken of me. She also mentioned in her letter that the manuscript that had been stolen, and in you got that, give it up.

I got back a rather disgusting letter from John Peterson, in which he said -- didn't even mention the photographs. He didn't mention the organization having them. And he went on a tirade again about me. Some of those documents from the manuscript or from whatever was in my briefcase, probably you will see them here today.

Sometime later, I met with another person. I don't know if he's been identified by the organization yet or not. If it's an operation, it's obvious. If they got him through one of their sec checks, his fate is also obvious. In any case, I won't give you his name, but he was supposedly above Joey within this group. This group of reformers. And I met with him --

Oh, now, we come to the subject of the complaints, which Mike Flynn had prepared this one approximately two years before. There were, at that time, a number of people who had left the organization who also wanted to reform it, perhaps they considered themselves Scientologists, certainly they had given their lives to Scientology, and they wanted to do something. They never did. But he prepared a complaint and the object of it was to put the organization, Scientology, in the hands of a receiver. Which, in my opinion, still exists as a possibility for resolution of the Scientology problem and still is the sanest solution, because it should be with the courts. It just, in my opinion, it should not happen that this organization can continue hiding behind the cloak of religiosity.

So I gave a copy of this first complaint to these people. They wanted to do something. Later they said -- and I can't recall exactly who said what, whether or not it was in a telephone call or whether or not the intermediary told me or whether it was Joey or the other guy. But one of them told me that the complaint was for -- that it wasn't current enough. And that they even had some people who were in the organization, who they said would be parties. So I asked Mike Flynn -- and this is Mike's sole involvement with this -- Mr. Cooley asked me about something about Michael Flynn being involved in covert activities. And the fact is no, he never has been. Mike -- At my request, he gave me this thing. And his idea has always been from the outset, get it out in the open. Get the truth known. That's the way he's approached it. He's been completely open with me and he has given me free reign to say whatever I know. He has never tried to suppress the truth and he has never engaged in covert activity.

So I asked Mike, and he drafted this document and I gave it to these people. When I met this person, he asked me a question -- I think this was the first meeting, because I met him twice. He asked me something about Mike Flynn being behind this. I had not mentioned Mike Flynn or that this document had come from him, and I thought it strange at the time. And I should have twigged, as we say, that there was something going on because the question in retrospect was possibly a setup. And I said, "I won't tell you who is behind it. And if I'm asked under oath, I'll tell you the same thing. I'm behind it. Mike did it for me. I relayed it to them at their request. They are be behind it."

In any case, I had these two meetings. We exchanged information. They said that they were using me because -- as I say, I had a track record, I had known statistics, I was in connection with people on the outside.

Oh, also, at the first meeting, they wanted to know of the possibility, what would the federal agencies do? Could they cut a deal, was their word. Excuse me. Could they cut a deal with the federal agencies. I had given testimony at that time to the -- Ontario Provincial Police, the state attorneys office in Florida, the FBI -- that was in a separate case -- and the criminal division of the IRS. They said that they were concerned because there had been this IRS ruling which had come down denying their tax-exempt status. And they thought that if they were going to take over this organization, or do whatever they had to do to get rid of the little cabal at the top, that they would want to reinstate their tax-exempt status or get it back or get it. And they asked me about cutting a deal with any of these agencies.

I said, "In my opinion, that all of these agencies would probably be pleased to know that the organization was becoming honest and that they would probably work with these people, but that they could do nothing."

During this period of time when I was talking to these people, I brought up the subject with the criminal investigation division of the IRS. I said that I had been contacted by these people who say that they want to reform the organization, they want to know what you will do. Their answer was, "Have these people come forward and testify. If they are afraid for their life, we will meet them anywhere under any conditions. We want to protect them the best way that we can protect them as if they are witnesses."

I, myself, was a witness and to some degree, I feel protected because I am a federal witness. I doubt that the organization is going to bump me off, because I'm a known federal witness.

And the IRS also said that -- that if there was a transition in power within the organization, that it would probably be business as usual. They, their attorneys, would simply then be in communication with this new -- new management's new attorneys, and that that's how it would be. They would not be involved. They did say that if there is going to be anything going down, they also don't want a Jonestown, and that if something like that happens, that these people should get in touch with them. And this is basically what I relayed back. I gave them the people inside, because I felt that, you know, if these people are sincere and if they are nailed by the organization, they are in some trouble so they should at least have phone numbers to contact. And I gave these to Joey with a couple of names. FBI and CID of the IRS.

I then -- I also relayed to them that -- and I said this many times in many contexts, there's nothing that I can do, there's nothing that the IRS can do, there is nothing that the FBI can do. If you guys want to do something, you do it. You cannot tag onto the coattail of indictments which may come down at some point. Because we all knew that there was a criminal investigation going on by the IRS and there was -- the investigation and pending case by the Ontario Pronvincial Police, and I think there's even a mention of that in the second complaint, which was just -- it was a draft. It was not to be used because, you know, Mike was writing this at my request on the information which I relayed from these people, and it could simply not be accurate.

I was asked at one point about an attorney. They said they were considering Mike Flynn or Contos and Bunch. Both of whom were my attorneys in the Armstrong case. I said that, in my opinion, because you people, in bringing this action, are in essence Scientology, that it would be a -- what's the legal term? --

THE COURT: Try conflict of interest.

THE WITNESS: Thank you, Your Honor.

There would be a conflict of interest. And I checked this out with the attorneys involved. Mike and Contos and Bunch -- they said, yes, but that's how they would perceive it as well.

So the organization -- this group, said they wanted to get an attorney, they wanted me to find them an attorney. So I did what I could. I got ahold of a couple of possible names. Then they said that they had already contacted an attorney. And through a series of communications and ultimately being directed to a particular secret location, I met with an attorney. And I don't know if his name is out or not or if he was working for the organization. My guess is he was, but if -- I would just as soon not say whose name it is.

Now, not being very gifted in the legal business, I asked him at the outset -- I was driven there and just dropped off. So I met with this guy alone. I said at the outset, "I don't know what's going to happen in all this. I would -- I would only talk to you if it would be considered that our communication is confidential." He said, "Yes, but in any case I'm here now and I will waive it."

He had the complaint and he said that he was working on it. I still didn't know his client. And the main -- the substance of my communication to this man was, because he wanted me to substantiate some of the allegations in this complaint. I said, "These are things which your client, whoever that is, has been saying, they were saying to me. They have the information. I can't do a thing. I can't tell you when indictments are going to happen. All of the federal agencies or law enforcements of any kind is extremely closedmouthed. They don't tell me anything. Occasionally they will call up and ask for a specific esoteric piece of information and I'll try to provide it. But I don't get anything from them." I said that, "This all depends on your client. If your client is legitimate, if your client legitimately wants to do something about this, then perhaps there's a vehicle that they can use, they can go through the court and they can do that thing. In my opinion, a receivorship makes sense. The terrorism should end." It was a fairly brief communication with this attorney.

I haven't communicated to him since. I left him with the recommendation that, "I am not an attorney, I can't -- certainly cannot recommend anything to you. Talk to Michael Flynn. He can explain this better than I am. He has been involved with the organization since 1979, at least. It's been a long-term thing. He understands it. He understands the issues. He knows about Ingram. He knows about John Peterson. He knows about the control of the ASI, Author Services. He knows about the funneling of money to Hubbard. He could better than I." I said, "It all depends on your client. If your client has the courage, great. If it's all a sham, if it's all bogus, too bad." That's really how we left it. If they taped the conversation, maybe we will hear it later today.

My final meeting with one of those people -- actually there was a subsequent one which was just going out to dinner. It was with Joey, having a few beers, eating a meal, and mainly discussing his conflict about staying in the organization or getting out of it. That was -- I don't know, maybe it was two -- maybe two months ago. It is probably another part of whole operation to keep Armstrong on the hook.

But this last time I met with this -- the second guy, it was sort of a heated conversation. And I felt like he was trying to get me to say things say. He was trying to make me responsible for this whole -- whole thing. I was responsible, I was wrong because the Canadians hadn't come through. That kind of thing. And we discussed Scientology a little bit. I gave him my viewpoint, which I would give to anyone. And we left.

Sometime after, maybe a couple days later, I got a phone call from Joey and he read me a short message which apparently had come from these people, and it was -- it was sort of a kick in the teeth. And I felt, you know, it a bit heavy. And I wrote them a letter which I sent in via this intermediary. I don't know where the stuff goes. You know, obviously it went into the -- you know, their Bl files.

And, you know, a letter like a lot of my stuff kind of flips between absolute morbidity and absolute mirth. And that was the last real communication. Anything I got from them, and there was only those two instances, I provided to the appropriate law enforcement agency; anything I gave to them, I don't know what there is.

I do know that at one point I wrote -- this is my recollection of what I have written -- they wanted to get rid of the PIs, the private investigators. They wanted to get rid of Ingram. They were scared of Ingram. I noted that the use of private investigators is by Scientology's own policy, off-policy. Hubbard states that they are not to use outside agencies. Use our own professionals. That's a quote. Citing this, I wrote up, and I can't even tell you what I said, it was probably funny, probably -- I can't tell you. We are probably going to see it here today. And just an idea for these guys to do whatever they were going to do to get rid of the -- get rid of the PIs, due to the fact it was off-policy, due to the fact that the private investigators had, in fact, got them in more trouble than they got them out of. And I wrote in a few notes. And I really can't tell you what they are.

In all communications to these people, I tried to impress on them that I had survived this far because I had not done anything illegal. The organization had. That was their downfall. They at least twice, possibly more times, suggested -- they had this idea of creating documents and then having a raid, having the organization raided. I thought it was a stupid idea.

In these conversations, I may have said at the outset, even this I doubt, when asked -- I may have mulled it over, like it is a possibility. But I never left anyone with that impression that that was ever my idea or that I ever condoned it.

So I think I have covered more or less the whole sordid story. I should say, as well, that right after the story of Micahel Flynn came out by the organization in the national press, I called and Eugene Ingram at that point was involved, and I was told by the people, these people, Joey and his friend, that Hebert Jench, who is the figurehead president of the Scientology International Corporation, had given a speech or a number of speeches in which he had laid out that Ingram was responsible for the investigation. They also provided me with the names of other private investigators. I don't recall who their names are at this time, but I passed those on. They said that Hebert was going around making a speech, that Ingram was there, and that Ingram was making this claim about Michael Flynn.

When I heard this, I called up Eugene Ingram, I first called his office, I talked to a secretary in the office, couldn't get ahold of him. He called back fairly shortly thereafter. It was a very intense communication from Mr. Ingram. He stated that he was going to -- pardon me here -- he was going to fuck with me. He was going to get me. He was going to see me in jail. And he ended it by saying he was going to put a bullet between my eyes. And this was the guy who was employed by L. Ron Hubbard as his hired muscle. That occurred shortly after the materials surfaced in the newspaper, after I was back from London. That was the last communication I had with Eugene M. Ingram.

I think that's about it.

BY MR. COOLEY: (Continuing)

Q. Did you, on or about November 7 --

MR. WADE: Your Honor, could we have a recess at this time. It's about time for the morning recess. Mr. Armstrong's been talking --

THE COURT: We will take a very brief recess.

Please remember my cautionary instructions.

(Jury was excused.)

MR. McMURRY: We have a brief matter.

(Following proceedings held out of the presence of the jury.)

MR. McMURRY: We have a matter for the Court, Your Honor.

THE COURT: Okay.

MR. McMURRY: When this line of questioning was suggested yesterday afternoon, we objected strenuously under the evidence code of the State of Oregon. We also objected on the grounds -- excuse my voice. I have a bad cold.

THE COURT: It's okay.

MR. McMURRY: We also objected on the ground that it is incumbent upon the Court to protect the witness from harassment and embarrassment and undue delay or opening issues that will unduly confuse and prolong a proceeding. The Court, based upon Mr. Cooley's statement that he would connect up criminal activity and a conspiracy -- criminal conspiracy, allowed for this limited question.

I thank the Court for allowing the testimony to be fully stated. Obviously very, very sensitive to the witness. I now move that the matter be stricken and that the Court give the jury the limiting instructions that the matter was inquired into for the limited purpose of credibility. That's the only purpose for which it could be inquired into. And that as a matter of law, the matter has been explained, and unless and until Mr. Cooley at this time can, in-camera, bring clear and convincing evidence, the matter is stricken from the Court and then we would ask the Court for additional sanctions to be imposed, depending upon what the in-camera showing of this great evidence that he promised as an officer -- special officer of this Court.

MR. COOLEY: I haven't finished laying the groundwork yet. I would then, after doing so, be pleased to have the Court view, in camera, the evidence that I have of this witness' criminal conduct.

MR. McMURRY: Further cross-examination on this subject without an in-camera showing by sworn testimony would be improper, and highly prejudicial, Your Honor. The full discussion of the incident was allowed by the Court, and I think properly, to give the context. And I don't think that further cross-examination on this subject will do anything but prejudice, harass, attack, confuse and prolong this proceedings. Without such an in camera, under oath, by witnesses, not by protestation of counsel, but by witnesses, a full hearing on this extraneous matter of criminal conspiracy.

MR. COOLEY: I simply wish to ask the witness additional statements and give him an opportunity to either admitt them or deny them in connection with his conversationss with Pal Joey. And once he's done so, I would be happy to submit to the Court, in camera, the evidence that I have.

THE COURT: All right. I think you have the right to ask questions regarding conversations he's been allowed to testify to. And then I'm going to grant your motion, Mr. McMurry, to hear in camera what this evidence will be.

MR. McMURRY: Sworn testimony, Your Honor.

MR. COOLEY: I will inform the Court as to what my evidence is at the appropriate time. May I make a representation to the Court that I have it.

THE COURT: That's the representation that I was relying on yesterday afternoon that allowed us to go forward in this matter.

MR. COOLEY: Yes, sir.

MR. McMURRY: Your Honor, we object to that proceeding. The procedure within discretion of this

Court and the federal procedure, as a matter of practice, it is when this type of extraneous evidence on this serious a matter for a witness, before proceeding further, then the evidence must be adduced upon which further examination shall take place, because the prejudice cannot be offset by a limiting instruction.

THE COURT: To my way of thinking, the only person that has been prejudiced so far is Mr. Cooley's clients.

MR. COOLEY: I have allowed the full explanation to be made by this witness because I felt it was consistent with Rule 609 (1), that he be permitted to make that explanation.

THE COURT: And he did.

MR. COOLEY: Now he has made it. I wish to finish making my record and then we will let the Court and jury decide whether the impeaching testimony --

THE COURT: No, first I'll hear what that's going to be.

MR. COOLEY: Yes, Your Honor.

THE COURT: And then we will decide.

MR. COOLEY: Thank you, Your Honor.

THE COURT: Okay.

(Court recessed at 11:12 a.m.
Reconvened at 11:28 a.m.)

THE COURT: Get the jury.

(Following proceedings were held
in the presence of the jury.)

THE COURT: Mr. Cooley.

MR. COOLEY: Thank you, Your Honor.

BY MR. COOLEY: (Continuing)

Q. The meeting on November 7th with Joey, did you say to him that the best way to handle the creation of documentation was through the preparation of CSW or completed staff work in connection with an issue on which the person creating the issue would keep copies of the CSW that would be in the files in the event of discovery in a civil case brought against the Church or in the event of a raid?

A. No. We did discuss creation of the writing of a CSW, and the main area of interest was private investigators. And the object was -- again, this was -- you know, they asked me and I gave them whatever ideas I could. The object was to get the private investigators removed. The object was -- These people considered themselves, at least to some degree the way they presented themselves, were the old-time GO personnel. Joey considered himself an intelligence specialist. The object was to reestablish intelligence in the hands of the organization, show that it had worked in the past and therefore they could get rid of these thugs, private investigators. It was necessary to write a CSW and get the various people's signatures on the way up, even if it was a turndown, because the organization was, in fact, involved further on in an off-policy action by the use of private investigators. So how exactly they were going to do this? I don't know. In fact, they asked me and I even just scribbled one out for them, something about the private investigators. Mr. Cooley undoubtedly has it.

They would have to retain a copy, not in the event of a raid, but simply as proof that it did occur. There could not be a denial by the top of the organization if a copy was retained.

Q. Did you tell Joey you could write the CSW and that you could duplicate the print and the ink?

A. Well, the two questions are actually different questions. I said I could not write the CSW because I don't have the information. They had the information. They have the specifics. I did, in fact, write -- I don't think I completed it, and I think that it was just some notes, and whatever it is, is what it is. That has nothing to do with the use of inks. What was planned, and this centered around the fear that the transition, whatever these guys had planned, would be a blood bath.

So there were a number of possibilities discussed.

One of them was, they had contacts on the outside, they had contacts on the inside, so they said. This is based on their representation to me, because I don't know who these people are.

And we discussed ways in which people within the organization could be contacted in advance of whatever these people did. They knew; I didn't. I even asked them, "Where are your people placed so that I can assess who the heck I'm dealing with?" I didn't get that information.

I suggested sort of a buddy system, so that in the event one of them got nabbed, they would know what to do; that the other guy would take care of them.

I suggested, and -- I don't know who actually suggested it, but we did talk about the necessity of in advance of whatever these guys do, writing some issues which would pave the way so that there was not a blood bath. And that's the only idea that the use of inks, that is nothing whatsoever to do with the CSW; that is, the creation of mimeographed issues similar to whatever the organization uses so that there could be something written by the organization, by them, whoever they are, so that it just was not miniature holocaust. That's what was discussed.

Q. Did you review papers with Joey and tell him that you had ideas on how to change them, and that since you could not go within a mile of the organization and you could not be stuffing things into their communications baskets, that you would need helpers?

A. It wasn't -- He apparently was in touch with people who was inside the organization. It would be ludicrous for me to say that I was going to do this. It's just ludicrous. He had these things. He came to me and said he -- his group -- I don't even know if he knew who they all they were. He said they were placed in various places within the organization. He said that they had been in the organization for two years prior to ever contacting me; that they had been operating as this group, the Loyalists, for two years.

So I did ask him about people in various places. Did he have someone in mimeo? He told me they had as they placed people, he said, within the organization. He told me about it. He told me about they now had two members on the Board of Scientology of California. He said that they had people in PR; that they had recently placed someone in PR. He said that they had placed someone at Gilman Hot Springs. All of these were his resources. I had no way of contacting them.

Q. Did you meet with Joey again in Los Angeles on November 9, 1984?

A. I can't tell you, again, if that's the date or not. It may have been. In Los Angeles?

Q. Yes, sir.

A. Okay. This is another meeting that I had not brought up earlier.

I was taken by Joey -- I don't think we had initially met in Los Angeles; we usually went through a series of stops, drops, whatever they are called, and he took me to a hotel in Los Angeles -- I think it's the Sheridan Grand. And there I was to meet someone that he said was the group's backer or potential backer.

Q. Financial backer?

A. That's correct. As I've said, they were considering the filing of a lawsuit. He took me -- And the way he introduced me was as he had talked to me before, as the person with known statistics, the person who knew what was going on on the outside of the organization, the person who had taken on the organization in the Armstrong trial and won.

Q. Excuse me Mr. Armstrong, just so you will know what I am talking about. I'm not talking about that meeting. I'm talking about another outdoor meeting.

A. That's the only one in Los Angeles. The other ones were in Griffith Park, to my recollection.

Q. All right, Griffith Park. I'm talking about another meeting in Griffith Park.

A. Again, I don't have records of dates, but I can tell you that I did meet him, probably two times in Griffith Park, this one time in Los Angeles, one time he took me to the attorney. One time he took me to this other guy, the second person. A couple of times I met him and there was no meeting. I was supposed to meet the other guy; it couldn't be established. Those are the times that I recall. There may be more, but those are definitely the times when I did meet him.

Q. On the second occasion of the second meeting in Griffith Park, did you tell him that you had reviewed the documents he had given you two days previously, and checked out the type styles and were then asked by him what your ideas were with respect to creating documents? And did you, before you would discuss your ideas with him, go over with him what the agreed story would be if he or you were deposed on the subject matter of your meetings?

MR. WADE: Your Honor, at this time we would object on the grounds that it appears that Mr. Cooley is reading from a transcript. If he is, we would request a copy of that transcript be given to the witness so he can determine whether or not it's been read out of context.

THE COURT: Do you have a transcript of some sort?

MR. COOLEY: I have notes here. There will be the full text after I finish questioning the witness for the --

THE COURT: If it's not an official transcript, overruled. Go ahead.

BY MR. Q. Can you answer that question, sir?

A. We may have discussed that sort of thing. Generally, what I have -- what I have said is, I will try and protect names, but I can't tell you anything else. They are going to depose me, and if this comes up, it comes up. I don't think there's a Court, knowing this organization, that's going to compel me to divulge the names of these people because it would put them at risk. As I say, obviously that's moot because it was a setup from the start.

Q. Did you on that occasion, that second occasion, pose a situation to him whereby he is served with a paper saying you are deposed and not only that you are out of the organization, and put the question, what do we say in the deposition? And did you ask him whether or not he was going to say that Armstrong and he talked about this and had a whole bunch of ideas about how to infiltrate the communication lines and spread turmoil and disaster? What are we doing here, did you say to him? That is the question before I tell you my ideas on documents. Did you have that conversation with him?

A. Well, I do not recall those statements.

Q. Did you then say for an agreed story, of your meetings, that you and he got together had a goal of global settlement of the cases; that he had felt that the turmoil and abuses that had gone on so long were too long, and hence you and he got together and discussed things, and have not discussed anything about destruction of the tech or that Scientology is bad or anything like that? And did you ask him whether he would agree to give such testimony if asked?

A. Something like that definitely may have occurred, because that has been my statement from the outset. It is that I sought a resolution of all the battles which were going on. I was enmeshed in this thing and, in fact, I had said to him from the outset that I want -- what I'm seeking is down weapons and the madness. If I asked him would he agree to that? That's why I'm here. If you are here for something else, maybe that's the way it was.

Q. After he agreed to that scenario, did you then say to him, "Did it seem to you that the use of the communications lines were what he should do?" And did you say to him, "I'm saying that I can do it; I can type those goddamned things in duplicate and make them look exactly the same. You can't. And you would not be able to tell the difference"?

A. That's probably the case. Again, this had to do with the necessity of: if they were going to do anything -- in advance of that, having something to explain what was going on, they had asked me a number of times to -- on the outside, they wanted me to contact the press; they wanted me to contact -- to set it up with a reporter in Clearwater, so that a story -- so that their story could be in the press. So there was a number of things like that in which they elicited my help, and

I agreed.

Q. Did you not ask Joey to get you the information data that you needed so you could prepare the documents to be planted in the form of CSW in the files of Scientology for the purpose of framing David Miscavage, Gene Ingram, John Peterson and others?

A. No.

MR. COOLEY: At this time, Your Honor, I am prepared to the submit to the Court two videotapes of the meetings of the seventh and ninth of November 1984.

THE COURT: I'm going to send you to lunch before we get into that -- 1:30. You all know my cautionary instructions. Be sure you leave your notes locked in the jury room.

(Jury was excused. Following proceedings held out of presence of jury.)

MR. COOLEY: Get the equipment set up.

THE COURT: I assume you are going to want to say what these things are.

MR. WADE: Certainly, Your Honor.

THE COURT: Do you want to review those before I see them, so you can make any objections?

MR. COOLEY: An in camera inspection -- I have no objection to Mr. McMurry being here while you view it and seeing it right along as we view it together.

THE COURT: I don't want to go through the lunch hour watching tapes.

MR. COOLEY: I couldn't blame you for that, Your Honor.

MR. McMURRY: Your Honor, we want to do two things. Number one, we will want to have the tapes examined by an audo-visual expert for determination of the amounts that have been edited and what editing has occurred, if any. And then we will need an opportunity to review them. Now, I don't know whether the person that we have in mind would be available at noon today or not.

THE COURT: I suggest we better start making some phone calls.

MR. COOLEY: That's what I recommend, Your Honor. That we get things set up, that the Court view them in camera commencing at 1:30. I can represent to the Court that the two full tapes run 1 hour and 48 minutes. And so perhaps 1:30 -- it might be appropriate to give the jury their vacation early, because I'm sure we will have some skirmishing thereafter, after the Court has looked at them.

MR. McMURRY: Well, in the first place we want to take the tapes and -- what size tape is it?

MR. COOLEY: It's a VHS.

MR. McMURRY: We would like to play it on our VHS system, Your Honor, in our office. Perhaps I can get the man to come to our office. I'm not sure whether I can or not. We will be back at 1:30 with the tapes and with such objections as we may have.

MR. COOLEY: I stenuously object to furnishing the tapes before the judge has seen them in camera.

THE COURT: We will get to the objection they made previously about releasing of their tapes.

MR. COOLEY: The last time we were only going to use excerpts, and Mr. McMurry said he was entitled to see them all. We are now going to screen them in their entirety, not just excerpts.

MR. MCMURRY: There are two tapes.

THE COURT: There are?

MR. MCMURRY: Certainly it would be a while to view them in our office and --

THE COURT: I don't think he wants to give them to you. Then, somebody from their -- if they resist giving them to you, then somebody can go over there with you, if they want.

MR. McMURRY: Fine.

THE COURT: And sit there with you when you watch them.

MR. COOLEY: I think it's inappropriate, Your Honor, for Mr. McMurry to be screening these tapes before the Court sees them and while the witness is still on the witness stand. After the Court has seen them, and the tapes are played for the Court, then Mr. McMurry --

THE COURT: But the problem -- it would save an hour and 48 minutes.

MR. COOLEY: Your Honor is going to have to view them in any event.

THE COURT: You may not have any objections.

MR. COOLEY: Your Honor, I guarantee he will have objections.

THE COURT: It looks like we are going to spend all afternoon watching tapes.

MR.COOLEY: I think it's very important Your Honor.

MR. MCMURRY: That's just delays. It's absolutely some more delays. There's no reason in the world. I have never been in a court yet where my reputation has not been sufficient that a document going to be offered or an exhibit that's going to be offered cannot be removed for examination.

THE COURT: Most times they wouldn't object to it.

MR. McMURRY: Right. This is absolutely absurd. Now to waste the afternoon going through the same kind of procedure that can be done over of the noon hour is just absurd.

THE COURT: I agree, I don't see any reason why you can't look at them at noon.

MR. MCMURRY: Then the Court can order it.

MR. COOLEY: Your Honor, I think it's terribly important, particularly under Rule 609 that contains no provision that the impeaching material or biased material has to be presented to opposing counsel before it's used; that the Court -- particularly under the superintendent's power, that I referred to yesterday, screen these tapes on a in camera or voire dire basis; that the objections if any that Mr. McMurry has made at the time. And I will then allow Mr. McMurry's expert to examine the tapes to satisfy himself that there has been no tampering with them.

MR. MCMURRY: Whatever Mr. Cooley thinks is appropriate, Your Honor. Apparently he's going to establish the rules, so --

THE COURT: Wait a minute, Mr. McMurry. That is not accurate. Let's not get into that, as to what Mr. Cooley wants or what you want. I'm going to make the rules. And the rules are simple. They are not that complicated. If there is an objection to them giving them to you and request that the Court hear them in camera, that is the procedure that must be taken. Most times counsel will not make that objection. That's why we don't have this problem. He has made one. That requires the Court to look at them. That's what we will do. We will look at them. I'm not crazy about the idea of wasting an hour and forty-eight minutes either. But if that's what we have to do, so be it.

MR. COOLEY: Thank you, Your Honor.

(Court recessed at 11:55 a.m.
Court reconvened at 1:36 p.m.)

THE COURT: The program will be, gentlemen, we will bring the jury back and I'm going to excuse them for the afternoon and they get their holiday tomorrow. We will take this afternoon on these tapes and legal arguments, which you indicated to me should take about two and half hours.

(Following proceedings held in the presence of the jury.)

THE COURT: Well, I've got some good news for you. It is qualified. It's going to take two and half hours and that may be three before we are through, to rule on some things that have to be ruled on before we can go forward with the case. I see no sense in having you sit in the jury room and just utilizing you for, at the most, an hour later today. So I'm going to let you start your vacation. You are going to get tomorrow off, as I indicated to you. I think it's appropriate in view of the length of the case, the fact you have all been here promptly all the time and you have been paying close attention. I have been watching you and I know that you have. So I think at this time, it's time you took a break from it for a day. That, plus the fact it's Easter Sunday, Passover starts tomorrow night. Everybody should get their respective houses in order.

I'm going to go through the litany of my instructions. Do not discuss the case amongst yourselves. Do not discuss the case with your family or friends or anyone at all you may see over this long weekend. Do not allow anyone to communicate with you or discuss with you any of the parties or this case at all. Do not go to work tomorrow. Consider yourselves sequestered for the purposes of this trial. I don't want you to go to your respective places of employment. My fear there is people will ask you questions and I don't want to put in a compromising situation of having to discuss anything about the matter. So the day off means what it says: a day off. Both work and here. Please leave your notes locked in the jury room when you leave.

Avoid the media regarding this case or any parties thereto. I think you all understand what I mean by that. I'm talking about stories, I'm talking about advertisements, I'm talking about radio coverage, TV coverage; whatever it might be. If you hear about any parties in this case, immediately tune yourself out.

Okay? Any questions before I let you go until Monday morning?

All right. You are excused until Monday morning at 9:30.

(Jury was excused. Following proceedings held out of the presence of the jury.)

THE COURT: This Court feels after five weeks they have earned it.

MR. COOLEY: I agree.

MR. McMURRY: Your Honor, if I may, if the Court would indulge me, I would like to ask you to take out the first volume of ORS, please, so that I can be reading from the statutes as you read with me. I would like the Court to turn to Chapter 133, please.

THE COURT: Criminal Procedure Generally?

MR. McMURRY: Yes, 133.731, which is the heading of that section entitled Interception of Communications. I would like the Court to be aware, as I'm sure you are, that --

THE COURT: You may rest assured I am.

MR. McMURRY: -- that section 133.724 provides that: "Any Circuit Judge may, upon exparte motion of a person who is the District Attorney for the county, may authorize an interception or wire tap of an oral communication upon showing of certain factors contained in subsection (1) A through K."

THE COURT: I know them very well. I just tried a case of the State v. Hinson, a murder in the first degree case and I had the problem.

MR. McMURRY: Very good, Your Honor.

THE COURT: That was some weeks ago.

MR. McMURRY: There's been no such showing in this proceedings. In addition, the statute, in its first section, provides: "That the interception or -- describes an oral communication as "any oral communication, other than a wire communication, uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such exception."

It goes on to define an agrieved person as "a person who was a party to any wire or oral communication intercepted under ORS 133. 724 or person against whom an interception was directed."

The application for such an exparte order is --

THE COURT: You sound terrible.

MR. McMURRY: I am terrible, Your Honor. I am looking forward to --

THE COURT: I'm glad we have tomorrow off.

MR. McMURRY: I have a bad cold, but I'm not going to let that stand in the way of this matter.

Now, the Court knows the confidentiality of not only the application but the order, itself.

Going on, 133.733 provides: "The contents of any wire or oral communication intercepted under ORS

133. 724 or evidence derived there from, shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this state unless each party, not less than ten days before the trial, hearing or proceeding, has been furnished with a copy of the court order, accompanying application under which the interception was authorized or approved."

That has not been done, of course.

Now, in such a situation, 133.735 applies and it provides: "Any agrieved person," as I have previously defined, "in any trial, hearing or proceeding, in or before any court, department, officer, agency, regulatory body, or other authority of the state or of a political subdivision thereof, may move to suppress the contents of any wire or oral communication intercepted under ORS 133.724."

It was not taken under that statute, as there has been no showing that such a motion was made by the District Attorney of this county. Nor has there been a motion to provide us with that application and the requisite showing.

Going on, 133.736 provides: "Any agrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of the state, or political subdivision thereof, may move to suppress under ORS 41.910, recordings of such conversation. Such motion shall be made before trial, unless the party did not have an opportunity, was not advised of the intent to use this tactic."

Now, the statute goes on to provide in Oregon: "That any person whose wire or oral communication was intercepted, disclosed or used in violation of 133.724, or 133.737, shall have a civil cause of action against any person who wilfully intercepts, discloses or uses or procures any other person to intercept, disclose or use such communication and shall be entitled from such persons actual damages, but not less than damages conputed at the rate of $100 a day for each day of the violation or one thousand dollars, whichever is greater, punitive damages and attorneys fees."

Going on, ORS Section 165.535, "Crimes and Punishments, and Section 165.540, part thereof, makes it a crime in this state for any person to obtain or attempt to obtain the whole or any part of a conversation by means of any device, contrivance, machine or apparatus, whether electrical, mechanical, manual or otherwise, if all participants in the conversation are not specifically informed that the conversations is being obtained."

So not only has a criin our state, but the effort to introduce evidence of this type violates our procedures in this state, entitling Mr. Gerry Armstrong to damages against the participants and the person who made use before this jury without prior authorization from this Court we will off videotapes of entire discussions before this jury. Lest there be some mistake that this is conduct condoned in the great State of California --

THE COURT: That was my next question.

MR. McMURRY: -- County of Orange or any other county, I would call the Court's attention to Section 631 and 632 of the California Annotated Code. That section, interestingly enough, Your Honor -- interestingly enough, is entitled, and most appropriate for this case, Invasion of Privacy.

It provides, among other things: "Any person who by means of any machine, instrument or contrivance, electrically, acousticaly, inductively or any other way, engages in attempted surveillance of an oral communication without the consent of all parties, is civilly liable, criminally liable by a fine not exceeding ten thousand dollars or by imprisonment in the county jail."

The exceptions are to a public utility. There's one other exception, which I think is very, very important, 63 -- I'm sorry, 633.5. "Recording, communications relating to commissions of extortion, kidnapping, bribery, felony involving violence against the person."

I would like to read that in its entirety, if I may, Your Honor.

"Nothing in Section 631 or 632 shall be construed as prohibiting one party to a confidential communication from recording such communication for the purpose of obtaining evidence, reasonably believed to relate to the commission by another party to such communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person. And nothing in Sections 631 and 632 shall be construed as rendering inadmissible in a prosecution for extortion, kidnapping, bribery, or felony violence against a person."

The statute goes on to say that there's a civil penalty, the statute goes on to provide that such evidence is not admissible in any court or tribunal in the state.

So, we then looked, in the brief available time to us, at Section 632 to determine whether it followed and was as strict in its admonitions and prohibitions as the State statute of Oregon, and we found it to be so.

And I'll hand to the Court a Xerox copy, together with the full volume of the California Penal Statute. The Xerox copy is of Section 632 of the California Annotated Penal Code. And I'll hand to the Court the entire volume covering Section 447 to Section 680.

Number one, no predicate was placed before this Court as required by our statute. And no predicate can be placed before this Court, because this is not an action for bribery, kidnap, or extortion. This is a case involving Julie Christofferson Titchbourne. The only purpose for this type of tactic, and the marginal relevance that the Court allowed it in for, was to question bias. And that's the only ground upon which it could be even marginally relevant.

It is a crime. It exposes these defendants and counsel to civil and criminal liability, and it has been brought before the jury through the extravagant outburst of Mr. Cooley, before the jury retired, in a grand gesture, that he was going to produce these tapes.

I submit, Your Honor, that no reference to these tapes can be made. I submit that the counsel that made the outbust is in violation of proper procedures and standards within this court. I submit that counsel is subject to civil and criminal liability for his participation in these activities. And after the Court has ruled, I will have a further motion to address to the discretion of this Court.

MR. COOLEY: At the outset, I entertain no doubt whatsoever that the Oregon statutes with respect to electronic interceptions would apply if this electronic interception had occurred within the state of Oregon. It obviously didn't. This interception -- these two exceptions occurred at Griffith Park in California. There was no -- at any time there was no electronic surveillance in this state that would occasion coming before any Justice of this Court, or any other court in the state of Oregon in that regard.

Consequently the issue is whether or not this electronic surveillance was appropriate under the laws of the state of California.

THE COURT: Well, the question is one past that. We can argue that. The statutes in Oregon don't make a distinction whether it's illegally done in California or illegally done in Oregon. It says if it's illegally done, it can't be used in any court in the state of Oregon.

MR. COOLEY: Yes, but I think the determination whether it was legal when it was done has to be governed by the law of the state where it was done. If it was lawful where done, I do not believe that the Court would find that the law --

THE COURT: It has to meet the requirements before it's admissible in this state.

MR. COOLEY: It has to meet the requirements of being lawful where done; I certainly agree with that. I don't believe that the criminal laws of the State of Oregon reach beyond the borders of the state of Oregon.

THE COURT: No, they don't.

MR. COOLEY: So if the law of California authorizes this, then I respectfully submit to the Court that the laws of the State of Oregon do not reach an electronic interception which occurred in the state of California. And I have a case, Your Honor, from Lexis, which we have a printout from Lexis, a California case, and before I read it to you I think it's important to analyze the California statute.

Section 632, in substance, prohibits electronic interceptions as a general rule without two-party consent. But it talks about confidential communication. It is confidential communication which may not be intercepted.

The word "confidential" is defined in the statute as follows: "the term 'confidential communication' includes any communication carried on in such circumstances as may reasonably indicate that any party to such communication desires it to be confidential to such parties, but excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceedings open to the public, or in any other circumstancess in which the parties to the communication may reasonably expect that the communication may be overheard or recorded."

Now, that language has been construed by the State of California -- and I'm about to hand to the Court the decision of the Court in the case of People vs. Chaim, Henry Chaim Brent. And I read this language to the Court.

It says -- first of all, in a synopsis, it's very interesting to note the context in which that Court was dealing -- it says: "The primary issue raised in this appeal is the propriety of allowing the prosecution to introduce in rebuttal the contents of a secretly tape-recorded conversation allegedly made in violation of Penal Code 632. The trial Court allowed the evidence to be introduced in rebuttal because it felt certain" -- "it felt certain defense witnesses had lied about the contents of the conversation during their testimony. In order to resolve the issue, we must examine what qualifies as a confidential communication within the meaning of Penal Code Section 632, Subdivision 3."

The Court went on as follows: "The Constitutional right of privacy and the State and Federal regulations prohibiting the recording of conversations are all designed to protect confidential communications. Therefore, the test as to whether these salutory laws have been violated depends upon the person whose conversation was recorded had a reasonable expectation of privacy at the time of the recording. In the instant case, none of the parties present during the meeting had a reasonable justifiable expectation that the contents of their conversation would be kept confidential.

There was never any agreement or understanding among the parties that the conversation would be kept to themselves. In fact, it was understood that at the very least, if any agreement were reached at the meeting, Levi's brother would be contacted in Israel concerning the transfer of funds. And even if no agreement were reached, Dadon would discuss the meeting with Charon. The only persons not to be informed about the meeting were the police. An understanding by the parties present, that persons not present at a conversation will be told what was discussed, removes any such conversation from a protection of Penal Code Section 632, Subdivision C."

Now, Mr. Armstrong, when we allowed him this morning to give his one-hour dissertation -- and Mr. Manion is handing a copy of that decision to the Court -- made it very clear that he understood fully that this fellow Joey would go back and report to his people what Mr. Armstrong and Joey were discussing, that those people, whom he did not even know by identity or by name or by position in the Church, were people to whom the contents of this discussion would be communicated in full. He therefore had no right, expectations of right of privacy, or that the subject matter of the conversation would not be disclosed.

And the case we have just handed to the Court is dispositive of the issue on the subject matter of the confidential nature of the communication as a condition prededent under Section 632 of the California Code.

More over, that does not end the inquiry, because there are additional matters which have to be dealt with as to the 634 of the statute. Mr. McMurry, it seems to me, rather summarily passes over a situation to which the statute does not apply. And namely, it does not apply for an interception that deals with the issue of extortion. I'm sorry -- I have the wrong section; it's 633.5 of the California Code.

It says, in substance -- or it says verbatim: "Nothing in Section 631 or 632 shall be construed as prohibiting one party to a confidential communication from recording such communication for the purpose of obtaining evidence reasonably believed to relate to the commission, by another party to such communication, of the crime of extortion." It goes on also to include kidnapping, bribery, the like.

And so, Your Honor, not only does the interception -- is the interception justified under the definition of confidential communication, but what we were dealing here is gathering evidence of the crime of extortion. Because, as these tapes will clearly show, the game plan was to plant documents in the files of Scientology, through the use of the completed staff work, that would implicate Scientology in unlawfull activity, for the purpose of bringing down the present management, putting in place the loyalists which would result in the settlement of all of Michael Flynn's cases. And that, Your Honor, is extortion, pure and simple.

There's a third exception for authorizations and the like, but I respectfully submit to the Court at this point that it is sufficient that the communication was not confidential within the meaning of the statute. The evidence was gathered in an effort to gain evidence of extortion. And I'm informed, also, that it was authorized by a police officer in the state of California and that that is permitted under the following Sections of Code: 635 -- 633, I'm sorry.

Section 633, which provides: "Nothing in Section 631 or 632 shall be construed as probiting the attorney general, any district attorney; or any district, assistant, deputy, or any investigator of the attorney general or any district attorney; or any officer of the California Highway Patrol or any chief of police, assistant chief of police, or policeman of a city or city and county; or any sheriff, under-sheriff, or deputy sheriff regularly employed and paid as such of a county or any person acting pursuant to the direction of one of the above above-named law enforcement officers, acting within the scope of his authority, from overhearing or recording any communication which they could lawfully here record prior to the effective date of this statute."

Your Honor, on all points, the California law has not been violated. I think that the confidential aspect of it is dispositive under the case I have given you. I believe the investigation of the crime of extortion also is justification, even if it weren't confidential -- if it weren't a communication in which there was no reasonable expectation of privacy.

Mr. McMurry's suggestion that I have committed a crime -- I'm sure he would like to see me take a long vacation at the courtesy of the State of Oregon. But I respectfully submit that the Oregon law does not apply to the interception; that if lawful under California law, that it was lawfully intercepted, and I respectfully submit that it was.

MR. McMURRY: Let me go to the last reference made to the California Code. That's why I brought it down. Section 633.5 provides that: "Nothing in the Invasion of Privacy section of the California Code shall make illegal prior sheriffs' and police officers' invasion of privacy that was theretofor legal, prior" -- I think to 1976. If you read the statute and the effective date of it it says: "Prior to the enactment of this Section -- or Code." And the effective date is 1976.

Going to the second point, he takes out a case which has a date -- let me see here -- May 4, 1984, in which, at the time of the person who was charged with illegally receiving stolen property -- and they were discussing how to fence it, apparently; the language is not to clear --the following people were present: Dadon, the defendant; Levi; Bentoff; Levi's wife; and Dadon's girl friend. And there was discussion about having to also discuss this with Levi's brother in Israel. And Dadon would discuss the meeting further with Mr.

Charon. We don't know who they are, because the language of the case doesn't allow us to make that interpretation. I cite to the Court an interpretation of Section 632, found in the case of Warden -- this is a civil case, it looks to me, not a criminal case; this looks to be a civil case -- Warden vs. Kahn.
K-a-h-n. 1979. 160 California Report 471, 99 CA 3rd, 471. In which interpretation of Section 632 calls for: "A determination as to whether circumstances reasonably indicate that any party to such communication desires it to be confined to such parties, or whether circumstances are such that parties to communications may reasonably expect the communication to be recorded." Direct language that exactly follows the definition in our statute and the California statute.

Now, as to the first point, that this is -- or some point, I don't know which one it came in -- that this was some method of extortion, under no circumstances is that the purpose for which this evidence is attempted to be brought into this case. Under no circumstances has any crime of extortion been alleged as a defense, nor has the rudiments --

THE COURT: Well, I would not have let it come in at all, if we were talking about another crime. We clearly talked about that yesterday. I said it was coming in under bias.

MR. McMURRY: Correct.

THE COURT: Not to show any other crime, because it was inadmissible for that reason.

MR. McMURRY: Correct. Finally, Mr. Cooley misconstrues the Oregon statute. It does not provide that recordings taken under some other circumstances, in some other state or country, may be -- just because they are legal there -- even if they are -- our statute says it may not be intercepted, used, or disclosed.

Now the word "use" obviously implies that what may be legal in Russia cannot be used in the United States of America, in Oregon. What may be legal in California cannot be used to attack a witness in Oregon. And that's the only reason the word "use" or "disclose" would be present in our statute. Therefore, submission of this scandalous piece of evidence must be supressed, and we would submit -- Well, we will wait for further order of the Court.

MR. COOLEY: Your Honor, in Mr. Armstrong's testimony this morning, he, himself, went to the CID of the Internal Revenue. He said he went to the FBI. He was, himself, disclosing contents of what occurred in that conversation. He may have felt that that was all right, but he also knew that Mr. Joey was going back to his people.

In addition, Your Honor, to suggest that the Oregon statute, which I heard read here today by Mr. McMurry, which says that if it's done in violation of the Oregon statute, that it shall not be received, it is not done in violation of the Oregon statute since it's not done here. If lawful were done, I respectfully submit it's admissible here.

And finally, I invite once again the Court's attention to the Court's vested interest in superintending the proceedings that take place before it. If perjury has been committed from that witness stand, this Court has a vested interest in finding out about it. So I respectfully ask that we get on with the screening of this tape by the Court, in-camera.

THE COURT: I have some serious questions about the legality of even this tap -- I shouldn't call it a tap -- this interception under California law, although I'm only saying that off the top of my head without researching California law. I know it would not be permissible under Oregon law. And I have very serious considerations as to the admissibility of this evidence under Oregon law. I have no control over what out-of-state counsel is doing.

Mr. Runstein, I would be very careful, very careful, of knowingly at least, trying to use evidence that was illegal under the State of Oregon. I'm not saying you have, I am just saying, be careful.

MR. COOLEY: Mr. Runstein has had absolutely nothing to with the presentation of this evidence. I take full responsibility.

THE COURT: His unfortunate position is that he's Counsel of Record in Oregon Court as the Oregon counsel.

MR. COOLEY: Mr. Runstein hasn't even seen these things. I'm handling this and I take full responsibility for it.

THE COURT: You can't take full responsibility, unfortunately. Mr. Runstein has to take the responsibility.

MR. McMURRY: Your Honor, Mr. Wade has kindly brought to the Court a case that I did cite to the Court: WARDEN vs. KAHN, a civil case, which of course has even more impact because this is a civil trial, and not one which we are talking about stolen goods. And with the Court's permission I would like to hand up the decision and allow the Court some time to read it. It seems to me that it's compelling.

Finally, this Court, prior to the commencement of the jury trial, was repeatedly asked by Mr. Wade and myself --

THE COURT: I know what you are going to say.

MR. McMURRY: -- to be produced documents that were relevant, that were clearly within the ambient of the Court's ruling. This Court said, to its credit on at least three occasions that I can recall --

THE COURT: And probably more.

MR. McMURRY: -- that you had an abiding interest in the rights of privacy. The rights of privacy that you were protecting were the incumbent common law law right of privacy not known in statutory form. We are relying upon the statutes of the State of Oregon and the statutes of the State of California. We are also relying upon the inherent power of this Court and the inherent duties of this Court to protect witnesses from harassment, abuse and intimidation.

Just by measuring the marginal relevance of this biased testimony against its illegal form, against its illegal method of production, and against the violation, even if it were legal in California, procedurally, it couldn't be offered in this state.

THE COURT: I can't believe the laws of California -- I haven't looked at this -- that they can go around intercepting communcations without some form of order from a district attorney, police agency or court. I just can't believe that could be the law in California.

MR. McMURRY: It can't, Your Honor. I haven't cited the procedure --

THE COURT: There's a procedure to do that just as there's in Oregon. There has to be. I don't know what it is, but there just simply has to be one.

MR. McMURRY: There's even a first amendment right in California, at last look.

THE COURT: I know that we are more progressive than they were, but certainly they have to know about that.

MR. McMURRY: They have the first, the fourth and the fourteenth amendment in California, even. So the argument that you can walk up to the cop on the beat and say, "Hey, we are going to take --

THE COURT: Am I just out in left field somewhere? Doesn't there have to be some authorization to do --

MR. COOLEY: No, sir. Not if under the California law it is not a confidential communication. And not if it deals with gathering evidence for the crime of extortion.

THE COURT: Forget that argument about crime. I told you none of this is coming in under that theory.

MR. COOLEY: I'm not putting it in here under that, but that is the justification for taping it originally. I'm not going to put it in as --

THE COURT: You can call a posy a rose if you want to, but it's not going to come in under that basis at all.

MR. COOLEY: Your Honor, you are now dealing with a whole different issue. You are not dealing with what it's coming in for. It's coming in for bias under Rule 609.1. That's a different matter. We are now dealing with the issue of not what it's coming in for, but what was the legal justification for it being made in the first place. That's a different --

THE COURT: Anybody ever heard of Professor Younger?

MR. COOLEY: Sure.

MR. McMURRY: Yes.

THE COURT: He has a really good rule about this sort of thing for judges: If it smells bad, his nose, use your nose, he always told the judge. If it smells bad, it doesn't come in. And this smells bad.

MR. COOLEY: I think you ought to see it, Your Honor, I really do.

THE COURT: I have nothing to do all afternoon.

MR. COOLEY: I will pass the California statute to you, Your Honor.

THE COURT: I've got to see the law in California that says anybody can go around willy nilly making --

MR. McMURRY: I beg of you, just take a look at the statute he is relying upon, 633.5. It states, if you take it for the purpose of extortion, kidnap and violence to a person, it is admissible in prosecution of those crimes.

THE COURT: I understand that, Mr. McMurry.

MR. McMURRY: So it's bogus to say --

THE COURT: And I understand that Mr. McMurry.

MR. COOLEY: I also ask you to look at the definition of confidentiality and compare it with the case that I have given you and with the testimony of Mr. Armstrong.

THE COURT: They are contemplating prosecutions in those cases and prosecution for those crimes. I know what those cases are. I'm interested now for you gentlemen to tell me under what authority in the state of California, who issues an order allowing wire taps, body taps, communication taps. Where does the authority come from?

MR. McMURRY: Superior Court, Your Honor.

THE COURT: That's our Circuit Court.

MR. McMURRY: That's right. It tracks very closely to our court procedure. As the very constitutions of both states require, with the one exception --

MR. COOLEY: I have handed the Court a letter from Police Officer Philip Rodriguez, Serial No. 16924, Los Angeles Police Department, authorizing this electronic interception.

THE COURT: To a private investigator?

MR. COOLEY: Yes, sir.

MR. McMURRY: Here is Ingram.

THE COURT: Please.

MR. COOLEY: May it be marked for identification, Your Honor?

THE COURT: Certainly.

MKR. COLOLEY: I invite your attention to Section 633. I passed up the California code, I believe.

THE COURT: Yes. 633 is the one you are inviting my attention to?

MR. COOLEY: Yes, sir.

THE COURT: That's a different date setting.

MR. COOLEY: It's a different what?

THE COURT: This talks about what they could do prior to the effective date of this chapter.

MR. COOLEY: It says, "...or any person acting pursuant to the direction of one of the above named law enforcement officers acting within the scope of this is authority from overhearing a recording, any communication which they could lawfully overhear or record prior the effective date.

THE COURT: Yes. They could do that before they passed the law saying they couldn't.

MR. COOLEY: And this statute doesn't prevent them from continuing to do it. That's what it says. In other words, I think what the section says is, to the extent that this --

THE COURT: Let me understand this correctly. You are saying that this direction by a police officer --

MR. COOLEY: And the statute says police officer.

THE COURT: -- directed toward a private investigator gives him the authority to do it.

MR. COOLEY: That's what Section 633 says, Your Honor.

THE COURT: Who is Officer Philip Rodriguez?

MR. COOLEY: He's a police officer of the --

THE COURT: Is he here? I would like to talk to him. I'm not going to accept just his writing that Officer Rodriguez without some other authority --

MR. COOLEY: Your Honor, it really is not required.

THE COURT: I'm going to make a ruling on that. It's not in accordance with Oregon law; it's subject to a motion to suppress. If there's a motion to suppress, I will hear it.

MR. McMURRY: Your Honor, pursuant to ORS 41.490, we move to suppress the tapes that have been offered into evidence. It's not in accordance with Oregon procedures, practice and is in violation of our statutes.

THE COURT: I make no ruling on the legality of the interception. I'm not making a ruling on that. Nor am I making any ruling regarding any ethical considerations. I am simply saying that pursuant to Oregon statute, evidence derived from this interception of communications, in this Court's opinion, whether under this Oregon statute or whether under the Federal Constitution or whether under the common-law right of privacy which I have used for Mr. Hubbard, under any three, would not be admissible. If it's good enough for Mr. Hubbard, it's good enough for Mr. Armstrong.

MR. COOLEY: Mr. Armstrong's taken the witness stand, Your Honor.

THE COURT: Come on, Mr. Cooley.

MR. COOLEY: All I can say is this. What the Court has available to it here are tapes that I respectfully submit to you will show the Court that

Mr. Armstrong has committed perjury in this court.

THE COURT: If he has, then there's a form to determine it.

MR. COOLEY: Is the Court going to view these tapes in-camera or not? I don't know what Court's decision is.

THE COURT: Well, now that the jury is gone, I'm not going to receive them.

MR. McMURRY: It would be prejudicial to Mr. Armstrong. They are inadmissible for any purpose. The statutes don't say, the rights of privacy don't say, "Well, we just don't want the jury to see it. It's inadmissible for all purposes." The rights of privacy mean privacy.

THE COURT: Mr. McMurry, really, before I should make that determination -- I read Mr. Hubbard's documents. Now, if I'm going to apply the same rules to everybody, it would seem the same rule that I'm applying for one should apply to the other.

MR. McMURRRY: Much difference in kind, Your Honor, for two reasons: The Court has ruled that this is inadmissible, and properly so. Had the Court ruled that the subject matter of which we were inquiring of Mr. Hubbard was not discoverable, that ends the matter.

THE COURT: But Mr. McMurry, I don't want some Appellate Court To say this Judge did not even see the tapes upon which he could at least change his opinion.

MR. McMURRY: The only basis upon which you could change your opinion would be one. They were offered for the purpose of bias, to show bias.

THE COURT: Why don't we wait for that argument until I see them.

MR. McMURRY: Because the only possible legal basis that you would have to make inquiry of the tapes would be based upon, once again, Mr. Cooley's assertion that there's been perjury committed in this court.

THE COURT: What if he says somewhere along in these tapes, "I hate those guys. I would go out of my way to do anything to those guys"? That's bias.

MR. McMURRY: Right.

THE COURT: If that's there, I want to see it.

MR. McMURRY: But it won't make it admissible.

THE COURT: I didn't say that. I want to at least have an informed judgment upon which an

Appellate Court can onder looked at, made an informed judgment, made a judgment on the law initially, looked at the tapes, reaffirmed his decision, period.

MR. COOLEY: I think that's fair for Your Honor to do that. I would ask your --

THE COURT: Simply because I think it's a matter of my responsibility. It's not a question of even whether or not it's -- I think I owe that to the system. I owe it to see what -- It's nothing but a search for truth, anyway, Mr. McMurry. At least that's what I'm hopeful it is.

MR. McMURRY: I quite agree with that philosophically, Your Honor. I think --

THE COURT: Both of you tell me you agree philosophically, but I can't get you guys to agree on much of what's coming into this case.

MR. McMURRY: That isn't our role. May I suggest to the Court -- and I'm speaking now for Mr. Armstrong, not for Ms. Christofferson -- it's offensive. It's offensive the way this material was obtained by entrapment and deceit. It's offensive the way it was sprung in this case in violation of our standards and in violation of sense of decency. Then to say, "Well, that being true, all of that being correct, we still should determine whether there's something that might be" --

THE COURT: No. I should determine whether there is some overriding consideration that makes it so probative that it would override anything else that I have ruled on already. For that purpose I'm going to see them. I'm not going to view them out here because I think it's a matter for a right of privacy. I don't think every spectator should see them. In-camera means in chambers; that's where I will see them.

MR. McMURRY: Thank you, Your Honor. Your Honor, I do not intend to participate in that. I think, as is appropriate, we were not allowed to see the private documents of Mr. Hubbard. I know Mr. Cooley and Mr. Manion have availed themselves of this opportunity, but I don't think it's appropriate for other counsel to do so.

THE COURT: Nobody was there when I read the other documents.

MR. McMURRY: Correct.

THE COURT: I read those all by myself. I've got a slight problem in that I don't know how to work it.

MR. COOLEY: We have a technician here. If there's no objection, we will send him in with you, Your Honor.

THE COURT: He can get me started and let me turn it on and so forth.

We are recessed, now, for an hour and forty-eight minutes.

MR. COOLEY: Your Honor, as an aid, we have made up a transcript that Your Honor can follow as the tape is played.

(Court recessed at 2:30 p.m and reconvened at 4:30 p.m.)

THE COURT: I have reviewed them. I have some observations. I'm not going to change my decision. I think they are devastating. I think they are devastating against the Church. We certainly view them in different a way, Mr. Cooley, you and I. I'm not going to let them come in under any circumstances.

For the record, let me straighten out some things. With reference to California law, once again, I'm not making a determination at this time. It's not my forum, it's not my job. But I have carefully studied this California law. Even under California law, without some authority, and even if you view it in the most liberal terms possible, the only authority for Mr. Ingram to do this would be under Penal Code 633. There is not even a showing, even on the face of the document, of any authority. It's on private paper. There's no letterhead on it. Very questionable to me, and I think it would be to any judge. How Mr. Ingram obtained it, I don't know. That's not for me to decide. It could very well be a violation of California Penal Code.

Under Oregon law, the correct interpretation is not so much under the criminal statutes where we were looking, which is under 133, but 165 and the statutes contained thereunder. And that is the -- 165.400 and all the contents that follow that, et cetera.

The problems we were looking at are the authorization needed under 133 all involved criminal prosecutions. This is not a criminal prosecution that these tapes were made for. So 133 really is not the applicable statute, in my opinion.

If they were done in Oregon, if they had been done in Oregon, it would have been a violation of 165.540.

Now, I'm not going to disclose a great deal of what was on there. I really don't think I want to get into it. I can say this much, if it were a criminal prosecution, it would be it suppressed -- it borders more on entrapment than it does on anything else. How a sophisticated person, which Mr. Armstrong purports to be, could go for such an amateurish performance as I heard on those tapes is beyond me. The questions were being fed to him obviously; anytime he wanted to make an explanation, it was properly cut off. There was no evidence of any attempt to commit a crime that I saw. If it were, it would probably not be admissible, as I have just indicated.

He did ask the other person if he was wired, the person said no. There's some reference on the tapes that are very disturbing to me that I intend to take up with counsel privately. Because there's some reference made to the judiciary. And now that's serious.

The letters from Officer Ortega will be marked as an exhibit, 876, and will be a Court Exhibit only, for the Appellate Court to review. The two tapes should marked 877 and 878 and kept by this Court for the Appellate Court to review. I don't think we have heard the end of those tapes.

Be sure those are marked "Court only".

THE CLERK: Yes, Your Honor.

THE COURT: Okay. I think I have straightened out everything I had to straighten out regarding my questions, including the distinction in the statute as I saw it from the Oregon statutes and my reading of the California statutes, which I have done and I reviewed the tapes.

MR. McMURRY: Yes, Your Honor. At this time I do not wish to propose a motion for sansctions, but I am going to submit to the Court and counsel a memorandum -- it's been a long week, and I would like to submit to the Court a memorandum for its consideration over the weekend, with the advice to the Court that I will be moving for sanctions and instructions to the jury arising out of these matters on Monday.

THE COURT: I'll read it.

MR. McMURRY: Thank you, Your Honor.

THE COURT: I intend to be working in my office tomorrow.

MR. McMURRY: So do we.

THE COURT: I will read it then. There is no reason for you gentlemen to be here unless you want to see me for anything special.

MR. McMURRY: No. Thank you, Your Honor.

MR. COOLEY: We might want to furnish the

Court with a copy of this morning's transcript. The court did not have an opportunity to compare statements that the Court heard with this morning's transcript. It might be appropriate for the Court to examine that over the weekend.

THE COURT: Okay. Furnish me a transcript and I'll read whatever is furnished to me.

MR. McMURRY: Will they furnish us with whatever they furnish the Court.

THE COURT: Okay. We will be in recess, for purposes of this trial, until Monday morning at 9:30 with the exception I will see counsel, and no other matters will be taken up until Monday morning.

(Court recessed at 4:40 p.m.)

(Following proceedings held in chambers.)

THE COURT: I don't think this is a public concern as much as it is a private concern. Matters that I don't understand. It mentioned setting up poor old Judge Brisbee. I don't know what that's about.

MR. COOLEY: Who said that? Armstrong said it.

THE COURT: Yeah. He said they furnished the boat, they didn't furnish the drugs and the broads, but he furnished the boat. I don't know what that's all about. I'm disturbed by it, obviously.

On the second tape, there is a mention about FBI agents and judge tampering. And I don't know what that's about. They don't name the judge. These things disturb me.

I'm going to ask one more time, I have asked Mr. Peterson, Mr. Merten, Mr. Runstein, Mr. Manion and Mr. Cooley: is there any such shenanigans going on now with Ingram? Everybody has said no. Every lawyer has represented to me no. I'm taking that at face value.

MR. COOLEY: It is true. There's nothing. That stuff is old GO operations.

THE COURT: Okay. I'm asking the question. I expect answers from you as officers of the Court and as gentlemen. I'm talking about as it pertains to this case, Portland, Oregon, my staff, me, family, McMurry, Wade. I don't care who it is.

MR. COOLEY: The answer is no.

MR. MANION: The judge asked me this before and I told him this. And I share it with my co-counsel. If we found out that was going on, I assure you that myself and Mr. Cooley would be on the next plane out of here.

THE COURT: Fair enough.

I would be very shocked and dismayed if they knew anything. My concern is what they don't know.

MR. COOLEY: I am with these people most of the time.

THE COURT: Okay.

MR. McMURRY: They have to know --

THE COURT: I don't want any accusations in here. I'm just spelling out my concern out of the presence of -- I the privacy of a closed chamber.

MR. COOLEY: I gave you the tapes, warts and all.

THE COURT: You did. The bad part with the good parts.

MR. COOLEY: I gave it to you just the way it went down. You got a whole picture.

THE COURT: Obviously, Mr. Cooley, it was a difficult decision to give me that, because those were not the greatest tapes in the world for your client, I'll tell you that.

MR. COOLEY: The portions of them, Your Honor, that I wanted you to have.

THE COURT: I heard it.

MR. COOLEY: I think that we have got a real, real problem with what you have heard on the tapes and what you have heard on the witness stand. I don't know how you handle it. But the conflicts that exist between the testimony that's given here and some of the questions were asked with great specificity, because of the tape, and were answered contrary to what was said on the tape. Now, that seems to me presents a very serious problem with this man's continued testimony.

THE COURT: Let me address that. I did review them with that thought in mind. And I frankly, Earl, disagree with you. I didn't see that much inconsistency in what he was saying there and what he was saying on the tapes. That's consequently why I'm sticking by my ruling.

Aside from that, that's a ruling; it's done. I'm talking about now these other things. One other thing Charlie Merten said at that time, "Don, as long as I'm here, nothing will ever be done with reference to you." He also said, "Watch your ass if I'm not here."

MR. COOLEY: Well, number one, I subscribe to that philosophy on the first point. But I do not subscribe to it on the second point. I don't think you have to worry about your ass whether anybody is here or aren't.

THE COURT: Fine. That's what I like to

hear.

MR. COOLEY: All right.

THE COURT: Because I have not done any phone checks, I have not done any of that stuff. Frankly, I didn't think it was necessary.

MR. COOLEY: It is not.

THE COURT: I have expressed my concerns.

MR. COOLEY: What I plan to do, Your Honor, is to have this morning's testimony highlighted and set against that testimony, things that you have seen on the tape and submit it to you as an additional Court's Exhibit. But we have all weekend to do that.

THE COURT: All right. Off the record.

(Discussion had off the record.)

MR. McMURRY: I am aware that I have been followed to and from my home. I am not aware, but three of the people that have been staying with me, when they drove in at one time, an object was thrown from an overpass and struck the windshield of the car they werew, that has nothing to do, that we can prove, with anything that -- These people are very fragile and they are very damned worried as to their safety. That's obvious. That is the paramount reason that I have had them live in my home. But if

-- I'm sure Mr. Cooley or Mr. Manion or Mr. Runstein have not been aware of me being followed. But I think it's imperative -- I know this of my own knowledge, it has happened, and I would urge them to discontinue --

MR. MANION: I don't believe it.

THE COURT: Let me say this. I think it would be -- on the other hand, I think of these people's position and I can't envision them being that incredibly stupid at this point.

MR. COOLEY: It's the same thing that happened in the last case. People sstarted calling up jurors. Do you think my people are stupid?

THE COURT: I can't think of anything worse than to try to tail a lawyer, a judge or tap -- you know, I would go on the other side of that coin and I can't think why anybody would be that incredibly stupid.

MR. McMURRY: Whether you believe it or not is not why I said it. It has happened and I am just stating that for the record.

MR. RUNSTEIN: What happens in these cases is -- fortunately or unfortunately they haven't used the incident, and I assume the plaintiff will not. But she acknowledged there had been a car watching her house and had taken a license number. When we investigated that, because we were afraid we were going to hear it at trial. We located it as the car of her next door neighbor's boy friend. And we are prepared to establish the chain of title and also she indicated they had had phone calls that people you know, didn't hang up.

Well, while we were out investigating the car, finding out that it was her neighbor's boy friend, you know, I noticed not only does she have a listed telephone, but she has a huge sign on her house "For Sale By Owner" with the telephone number there. People can get carried away with these things --

THE COURT: I don't want to get into that with paranoia problem. That's not my style, guys.

MR. COOLEY: My credit card case was stolen. I'm not paranoid, I'm just careless, I guess.

THE COURT: I have expressed my concerns. If there are any further concerns by anybody, let me know.

I expect counsel, to the best of their ability, will keep control over everybody.

(Court recessed at 5:05 p.m.)